

3. Defendant Drummond Ranch, LLC, is a limited liability company that owns land known as the Drummond Ranch which is adjacent to the Plaintiff's land at issue in Sections 14 and 23 Township 22 North Range 10 East, Sections 21 and 22 Township 23 North Range 10 East, and Sections 22, 23, 26, and 27 Township 24 North Range 10 East, all in Osage County, Oklahoma.

4. Regier Flying Service, LLC is a limited liability company that performs commercial flying operations and aerial herbicide applications on land in the Northern District of Oklahoma at the Drummond Ranch. Its business office is located at 224 E. Oklahoma Ave, Fairview, OK 73737.

5. Bluestem Aerial Sprayers, LLC is a limited liability company that performs commercial flying operations and aerial herbicide applications in the Northern District of Oklahoma at the Drummond Ranch. Its business office is located at the corner of Stiles and Texaco Road, Cushing, OK 74023. Its mailing address is P.O. Box 881, Cushing, OK 74023.

6. Gentner Drummond is an individual who is a member of Drummond Ranch, LLC. He is also the principal attorney at Drummond Law PLLC, 1500 S. Utica Ave., Suite 400, Tulsa, OK 74104. He owns a residence at 1414 S. Galveston Ave., Tulsa, OK 74127.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under 28 U.S.C. § 1345.

8. Venue is proper in the Northern District of Oklahoma because a substantial part of the events or omissions that give rise to the United States' claims occurred in this district, and because the real property that is the subject of this lawsuit is located in the Northern District of Oklahoma. 28 U.S.C. § 1391(b)(2).

FACTUAL BACKGROUND

9. Skiatook Lake is a water resource development project administered by the U.S. Army Corps of Engineers. Skiatook Lake was authorized by Congress in the Flood Control Act approved October 23, 1962; Project Document HD 563, 87th Congress, 2d Session.

10. Skiatook Lake was authorized by Congress for flood control, water supply, water quality control, recreation and for fish and wildlife purposes.

11. Skiatook Lake is located at river mile 14.3 on Hominy Creek, a tributary of Bird Creek in the Verdigris River Basin, about 5 miles west of Skiatook in Osage County, Oklahoma, and about 18 miles northwest of Tulsa in Tulsa County, Oklahoma.

12. Birch Lake is a water resource development project administered by the U.S. Army Corps of Engineers. Birch Lake was authorized by Congress in the Flood Control Act approved October 23, 1962; Project Document HD 563, 87th Congress, 2d Session.

13. Birch Lake was authorized by Congress for flood control, water supply, water quality control, recreation and for fish and wildlife purposes.

14. Birch Lake is located at river mile 0.8 on Birch Creek, a tributary of Bird Creek, about 1.5 miles south of Barnsdall in Osage County, Oklahoma, and about 20 miles southwest of Bartlesville in Washington County, Oklahoma.

15. The Government Property at issue is located at both Skiatook and Birch Lakes.

16. The Skiatook Lake locations are located in Sections 14 and 23 Township 22 North Range 10 East and in Sections 21 and 22 Township 23 North Range 10 East, and were acquired by the United States of America in three separate transactions. On April 11, 1977, the United States of America acquired tract 607 from Katharine Whitehorn by general warranty deed. On September 27, 1977, the U.S. acquired tract 404 from Jack R. Drummond and Sandra

Drummond, husband and wife, by general warranty deed and flowage easement deed. Tracts 603-3 and 607 were also acquired on September 27, 1977, by general warranty deed and flowage easement deed from Leva S. Drummond, a single person, Leslie F. Drummond and Carol Ann Drummond, husband and wife, and Cecil G. Drummond and Mary Carol Drummond, husband and wife.

17. The Birch Lake locations are located in Sections 22, 26, and 27 Township 24 North Range 10 East, and were acquired in two separate transactions by the United States of America. The first was on February 12, 1976, from Christine Ambrose by general warranty deed and flowage easement deed for tract 208. The second was on September 27, 1977 from Leva S. Drummond, a single person, Leslie Drummond aka Leslie F. Drummond and Carol Ann Drummond, husband and wife, Cecil G. Drummond and Mary Carol Drummond, husband and wife, and Jack R. Drummond and Sandra Drummond, husband and wife, by general warranty deed and flowage easement deed.

18. Rules and regulations governing public use of Corps Water Resources Development Projects are published in Part 327 of Title 36 of the Code of Federal Regulations.

19. 36 C.F.R. § 327.14(b) provides that “[c]utting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Commander.”

20. Approximately 40,000 trees were killed on the Government property between 2014 and November 15, 2017 at Birch and Skiatook Lakes by the aerial application of various forms of pesticide and/or herbicide.

21. The Government property upon which the pesticides and/or herbicides was used is adjacent to land owned by Defendants Drummond Ranch LLC and Gentner Drummond.

22. The properties owned by Defendants Drummond Ranch LLC and Gentner Drummond were likewise sprayed with pesticides and/or herbicides at approximately the same time and show similar destruction of the trees and vegetation as is present on the Government property.

23. Defendant Bluestem Aerial Sprayers, LLC was hired by Defendant Gentner Drummond on behalf of himself and Defendant Drummond Ranch, LLC to apply pesticide and/or herbicide via aerial application to both Defendants' real property and the Government's real property.

24. Defendant Regier Flying Service, LLC was hired by Defendant Gentner Drummond on behalf of himself and Defendant Drummond Ranch, LLC to apply pesticide and/or herbicide via aerial application to both Defendants' real property and the Government's real property.

25. In 2017 the Plaintiff filed complaints with the Oklahoma Department of Agriculture.

26. The Oklahoma Department of Agriculture's investigation showed that Defendant Regier Flying Service, LLC sprayed both Government property and the Defendants' property on February 9, 2017.

27. The Oklahoma Department of Agriculture's investigation showed that Defendant Bluestem Aerial Sprayers, LLC sprayed Defendants' real property June 15-19, 2017.

28. The Oklahoma Department of Agriculture's investigation states that Defendant Gentner Drummond admitted to hiring Defendant Bluestem Aerial Sprayers, LLC and Defendant Regier Flying Service, LLC from 2014 to 2017 to make spike herbicide applications to 1,000

acres of Defendants' real property per year; was not concerned with the property boundaries; and instructed the applicators to apply the Spike herbicide onto the Government property.

FIRST CAUSE OF ACTION

(Intentional and Unauthorized Destruction of Trees)

29. Plaintiff realleges and incorporates by reference the assertions made in the General Allegations, paragraphs 1 through 28.

30. Defendants have, without permission from the United States, caused Property of the United States to be sprayed, treated, or spiked with herbicide, causing the trees located upon the Government's Property to die. This action violates 36 C.F.R. § 327.14(b).

SECOND CAUSE OF ACTION

(Wrongful Injuries to Timbers)

31. Plaintiff realleges and incorporates by reference the assertions made in the General Allegations, paragraphs 1 through 30.

32. Defendants have, without permission from the United States, caused Property of the United States to be sprayed, treated, or spiked with herbicide, causing the trees located upon the Government's Property to die. This action violates Okla. Stat. tit. 23, § 72.

THIRD CAUSE OF ACTION

(Trespass)

33. Plaintiff realleges and incorporates by reference the assertions made in paragraphs 1 through 32 above.

34. Defendants Drummond Ranch, LLC, Bluestem Aerial Sprayers, LLC, Regier Flying Service, LLC and Gentner Drummond have entered, or caused others to enter, the property of the United States without its permission and applied herbicide thereon.

35. Defendants have caused the death and destruction of approximately 40,711 trees on property of the United States without its permission.

36. Defendants knew or should have known that the property upon which the herbicide was applied was property of the United States.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

AS TO COUNT I

- 37. For compensatory damages for the destruction of trees;
- 38. For interest at the legal rate from the date of entry of judgment;
- 39. For an award of plaintiff's costs of suit; and
- 40. For such other and further relief as the Court may deem just and proper.

AS TO COUNT II

- 41. For ten (10) times compensatory damages for the injuries to timbers;
- 42. For interest at the legal rate from the date of entry of judgment;
- 43. For an award of attorneys fee and plaintiff's costs of suit; and
- 44. For such other and further relief as the Court may deem just and proper.

AS TO COUNT III

- 45. For compensatory damages for the trespass and destruction of plaintiff's property;
- 46. For interest at the legal rate from the date of entry of judgment;
- 47. For an injunction preventing Defendants from causing any further damage or destruction to Government property; and
- 48. For such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED,

R. TRENT SHORES
UNITED STATES ATTORNEY



MARIANNE HARDCASTLE, OBA No. 15054
Assistant United States Attorney
110 West Seventh Street, Suite 300
Tulsa, Oklahoma 74119
T: (918) 382-2748 | F: (918) 560-7938
Email: marianne.hardcastle@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2019, the foregoing document was electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to counsel of record.

William W. Ahrberg, OBA #161
Attorney At Law
Post Office Box 307
Cushing, OK 74023
ahrberglaw@sbcglobal.net
Counsel for Bluestem Aerial Sprayers, LLC

Doug Jackson
jackson@gungolljackson.com
Counsel for Regier Flying Service, LLC

Gentner Drummond
Drummond Law, PLLC
Drummond Ranch, LLC
1500 South Utica, Suite 400
Tulsa, Oklahoma 74104
Gentner.Drummond@drumlaw.com



MARIANNE HARDCASTLE
Assistant United States Attorney